

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL ACTION NO: 1:23-CV-00041**

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JACOB DOE,

Plaintiff,

-against-

**THE UNIVERSITY OF NORTH CAROLINA
SYSTEM, et al.,**

Defendants.

-----X

**DECLARATION OF STUART BERNSTEIN, ESQ.
IN SUPPORT OF PLAINTIFF'S MOTION FOR A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

STUART BERNSTEIN, ESQ., hereby declares subject to the penalties of perjury pursuant to 28 U.S.C. § 1746:

1. I am a partner of Nesenoff & Miltenberg, LLP, co-counsel to the Plaintiff in this matter.

2. On February 15, 2023, Plaintiff filed his Verified Complaint (ECF No. 1), Motion for Leave to Proceed under Pseudonym (ECF No. 2), and Memorandum of Law in Support of Motion to Proceed under Pseudonym (ECF No. 3). On July 13, 2023, the Court granted Plaintiff's Motion to Proceed under Pseudonym (ECF No. 41).

3. Additionally, on February 15, 2023, Plaintiff filed a Motion for a Temporary Restraining Order and Motion for a Preliminary Injunction (ECF No. 4), Memorandum of Law in Support of the Motion for a Temporary Restraining Order and Motion for a Preliminary Injunction (ECF No. 5) and a Certification of Notice of Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction (ECF No. 6). On February 22, 2023, the Court granted Plaintiff's Motion for a Temporary Restraining Order and scheduled the matter for a Preliminary Injunction Hearing for March 7, 2023 (ECF No. 14).

4. On February 15, 2023, the Parties received notification via ECF docket entry that this matter was assigned to the Honorable Chief Judge Martin Reidinger.

5. Thereafter, on February 15, 2023, the parties were notified via ECF docket entry that the matter was reassigned to the Honorable District Judge Max O. Cogburn, Jr. and that a Hearing regarding Plaintiff's Motion for a Temporary Restraining Order and Motion for a Preliminary Injunction (ECF No. 4) was scheduled for February 17, 2023.

6. On February 16, 2023, counsel for the Plaintiff learned for the first time that defendant UNC-Chapel Hill had not received any record requests concerning the Plaintiff that necessitated the issuing of a TRO. After a discussion amongst counsel, an agreement was reached whereby Plaintiff agreed, without prejudice, to withdraw his Motion for a Temporary Restraining Order and Motion for a

Preliminary Injunction (ECF No. 4). The Parties notified Judge Cogburn's Chambers of the agreement and the February 17, 2023 Hearing was cancelled by the Court via ECF docket entry.

7. On February 17, 2023, after the TRO Hearing was cancelled, the matter was reassigned back to the Honorable Chief Judge Martin Reidinger, via ECF docket entry.

8. On February 22, 2023, Judge Reidinger issued an Order granting Plaintiff's Motion for a Temporary Restraining Order and scheduling the matter for a Preliminary Injunction Hearing on March 7, 2023 (ECF No. 14).

9. Upon receiving the Court's Order (ECF No. 14), the Parties immediately contacted chambers and advised the Court of the previous conversation held with Judge Cogburn's chambers and the subsequent withdrawal of the Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 4).

10. On February 22, 2023, Plaintiff filed a Notice of Withdrawal of Motion Without Prejudice and Joint Request For Dissolution of TRO and Cancellation of Hearing (ECF No. 15).

11. On March 1, 2023, the Court issued an Order (ECF No. 19) stating in pertinent part that Plaintiff's motion was (1) "**Deemed Withdrawn Without Prejudice** to renewing his request for a preliminary injunction at a later date"; (2) "The Temporary Restraining Order entered February 22, 2023[Doc. 14] is hereby

DISSOLVED”; and (3) “The preliminary injunction hearing scheduled for March 7, 2023 is hereby **CANCELLED**.”

12. On October 3, 2023, counsel for Defendant The University of North Carolina System advised Plaintiff’s counsel that a public records request was made seeking the disclosure of Doe’s true name.

13. On October 4, 2023, counsel for the Parties discussed this new development and the most efficient manner in which to renew Plaintiff’s motion (ECF No. 4) and bring it before the court. Late on the afternoon of October 4, 2023, counsel for both Parties contacted chambers and spoke to Judge Reidinger’s Law Clerk. The Parties were advised to refile Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 4).

14. This Declaration is being submitted in furtherance of Plaintiff’s Renewed Motion for a Temporary Restraining Order and Motion for a Preliminary Injunction.

I declare under the penalty of perjury that the foregoing is true and correct, pursuant to Title 28, United States Code, Section 1746.

[signature page to follow]

Executed on the 6th day of October 2023.

/s/ *Stuart Bernstein*

Stuart Bernstein